

EXHIBIT 9

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

JOSHUA CHATWIN,)
) CASE NO.
PLAINTIFF,) 2:14-cv-00375
)
Vs.)
)
DRAPER CITY; OFFICER J. PATTERSON,)
IN HIS INDIVIDUAL AND OFFICIAL)
CAPACITY; OFFICER DAVID HARRIS, IN)
HIS INDIVIDUAL AND OFFICIAL)
CAPACITY; OFFICER HEATHER BAUGH, IN)
HER INDIVIDUAL AND OFFICIAL)
CAPACITY; AND JOHN DOES 1-10.)
)
DEFENDANTS.)
_____)

Deposition of Kathy Torrence

Taken: November 19, 2015

Reported by: Linda J. Smurthwaite, RDR

Intermountain Court Reporters
Murray, UT 84107
(801) 263-1396



1 Q. Had you taken anything the night before to
2 sleep --

3 A. No.

4 Q. -- or -- about what time, if you recall, did
5 you first notice the cop car across the street?

6 A. Probably around quarter to 12.

7 Q. And where were you when you saw it? You
8 said --

9 A. Standing in front of the window.

10 REPORTER: Okay, you need to let her finish.

11 THE WITNESS: I'm sorry, I'm sorry, I'm sorry, I'm
12 so sorry.

13 REPORTER: I just need a whole question. I got
14 "probably around quarter to 12", and I need your question
15 again.

16 BY MS. GREGSON:

17 Q. So, where were you when you first noticed
18 that the cop car was across the street?

19 A. Standing in front of my front window.

20 Q. Okay. And does your front window, is that
21 directly across the street from his, where his driveway
22 is? Would you say that they're directly across?

23 A. Yes.

24 Q. Okay. So, I want to kind of pin that down.
25 If 12:00 would be, you know, right in front of you. Is

1 Josh's driveway 12:00 from where you were standing at
2 your window?

3 A. Might be 12:10.

4 Q. 12:10. How many feet would you say -- I know
5 it's hard to estimate distances. 100 feet, 50 feet?

6 A. I couldn't even tell you. I never measured
7 it. I couldn't tell you how big my front yard is.

8 Q. All right. Can you tell me how wide his
9 driveway is? Can it fit two cars? Is it -- two cars
10 side by side?

11 A. Oh, definitely.

12 Q. Yes, okay. How was your vision that day? Do
13 you wear glasses?

14 A. I do.

15 Q. You do. Were you wearing your glasses at the
16 time?

17 A. Yes, I was.

18 Q. Okay. So let's go through the sequence of
19 what you saw. Okay. So you first said that you saw a
20 police car across the street. Did you see the police
21 officer?

22 A. The back of him.

23 Q. Okay. What was he doing?

24 A. He got out of his car to go to Josh's door of
25 his car.

1 Q. Okay. And what did he do when he got to the
2 door?

3 A. I don't remember.

4 Q. Did you see Josh hand him any paperwork?

5 A. I don't remember.

6 Q. And so, eventually he got him out of the car;
7 is that correct?

8 A. Correct.

9 Q. And they did a field sobriety test?

10 A. Yes.

11 Q. What kind of test did you observe?

12 A. Walking the line. That's what I remember.

13 Q. Just walking the line. Did he seem to be
14 struggling with the test?

15 A. Yes.

16 Q. Did you see the -- I know you probably
17 couldn't hear anything, is that correct?

18 A. Correct.

19 Q. From where you were. Did you see any
20 interaction between him and the officer? Could you tell
21 that he was saying things to the officer?

22 A. During the field sobriety test?

23 Q. Yes.

24 A. I couldn't hear anything.

25 Q. So you didn't see him saying something, like

1 his lips weren't moving?

2 A. I couldn't see that.

3 Q. Did Mr. Chatwin appear to be intoxicated,
4 from your observation?

5 A. Yes.

6 Q. How was his balance when he was walking?

7 A. Unsteady.

8 Q. When did you see other officers arrive?

9 A. We may need to go back a step here.

10 Q. Okay.

11 A. So, the officer that originally got there,
12 when he was talking to Josh at that point, that was when
13 the other two officers came. The original officer that
14 came, was not giving the field sobriety test. It was
15 another male police and a female police officer. The
16 original officer stayed with the car and was going
17 through the car.

18 Q. Okay. So yeah, let's back up.

19 A. Okay.

20 Q. So the first officer met Mr. Chatwin at the
21 door of his car, talked to him there for a bit, and then
22 other officers showed up, correct?

23 A. Correct.

24 Q. And the two officers, you said there was a
25 male and a female officer?

1 Q. The male or female?

2 A. No.

3 Q. Okay. So after they handcuffed him --
4 actually, first of all, where were they standing when
5 they handcuffed him, do you recall?

6 A. To the left of his driveway.

7 Q. To your left of his driveway, on the
8 sidewalk?

9 A. Yes.

10 Q. So they handcuffed him. And what did they do
11 next?

12 A. From my recollection, they walked him to the
13 back of the pickup truck.

14 Q. Both of them together, both the female and
15 the male officer walked him to the back of the pickup
16 truck?

17 A. I don't recall if it was both of them.

18 Q. Were they directly behind the pickup truck?

19 A. No.

20 Q. So where, in relation to the pickup truck,
21 were they?

22 A. So you have the front door, you have the
23 second door, and then you have the bed of the truck;
24 behind the second door.

25 Q. All right.

1 A. Close to the back of the truck.

2 Q. Okay.

3 A. Of the pickup truck.

4 Q. Where was the pickup truck parked?

5 A. In the driveway.

6 Q. All the way in the driveway, like all the way
7 up the driveway?

8 A. Not all the way up, just in -- I can't be --
9 it's been five years, so it was close to the sidewalk,
10 the back end of the truck. Now, whether the back end was
11 still in the sidewalk, I don't remember.

12 Q. So they bring him to the truck behind the
13 second door of the truck. Which way is he facing when
14 they take him that way?

15 A. North.

16 Q. Okay. So is north facing the truck,
17 facing --

18 A. Facing the truck.

19 Q. Facing the truck, okay, great. I don't
20 remember the direction around your neighborhood, I'm
21 sorry.

22 A. That's okay.

23 Q. So, when they get to the truck, that's when
24 things seem to get interesting, right? That's when the
25 incident happened, correct?

1 Q. Directly behind him, just standing?

2 A. Standing behind him.

3 Q. Facing his back?

4 A. Correct.

5 Q. Okay. And Josh is in handcuffs, correct?

6 A. Correct.

7 Q. Can you see his hands when the officer is
8 standing behind him?

9 A. Yes.

10 Q. You can?

11 A. Yes.

12 Q. Okay. How tall, in relationship to Josh,
13 would you say that officer is?

14 A. I don't remember.

15 Q. Not taller than Josh, shorter than Josh, you
16 don't remember?

17 A. No.

18 Q. But you could see Josh's hands, even though
19 the officer was standing directly behind him?

20 A. Correct.

21 Q. Okay. Could you see the officer's belt?

22 A. Yes.

23 Q. The back of his belt? I'm trying to
24 understand the angle at which you saw this, okay? So
25 could you see the officer's back, his side?

1 A. So, on the picture, this is Josh facing the
2 truck. This is the officer facing behind Josh. Here's
3 my window, so I see sideways. So I would see everything
4 on the side of everything.

5 Q. Okay. So you saw just from the side, you
6 could see both of them?

7 A. Correct.

8 Q. You could see space in between their bodies?

9 A. Correct.

10 Q. Okay. And how much space would you say was
11 in between the officer and Josh at the time?

12 A. I don't remember.

13 Q. You don't remember? It could have been --

14 A. Five years ago.

15 Q. -- five feet, a foot?

16 A. I mean he's standing behind him, so he wasn't
17 right -- right touching his -- his body wasn't touching
18 his. He was behind him, not --

19 Q. Okay.

20 A. If I was to give you a specific, I would just
21 be guessing.

22 Q. That's okay, we don't want you to guess. But
23 if you could estimate, that would be great, but you don't
24 have any recollection?

25 A. I could estimate -- I'm sorry. I can

1 estimate, like, if he was standing here, he was standing
2 behind him.

3 Q. So you are standing up and you're indicating
4 from the end of the table to --

5 A. This is Josh --

6 Q. --you?

7 A. -- this is the officer. What do you want to
8 say that is, three feet? Doesn't seem like three feet.
9 Two feet?

10 Q. I'm not answering questions, so I can't say,
11 but would you say that's arm's length?

12 A. Probably.

13 Q. What's Josh doing when he's up facing the
14 truck?

15 A. Nothing.

16 Q. Just standing there?

17 A. Un-huh, yes.

18 Q. So he's not moving at all?

19 A. No.

20 Q. And what happens after he is taken to the
21 side of the truck? What happens then?

22 A. The first officer starts taking stuff out of
23 the back of the truck, and putting it in the back of the
24 truck.

25 Q. So the first officer that was in Josh's car,

1 came over and starting getting things out of the truck?

2 A. Yes.

3 Q. And what's the female officer doing?

4 A. I don't remember.

5 Q. The male officer that's behind Mr. Chatwin,
6 what's he doing?

7 A. Just standing behind him.

8 Q. Just standing behind him. Do you see him
9 searching Josh, or touching him? No?

10 A. No.

11 Q. Just standing right behind him. And at some
12 point you say that this officer threw him to the ground.
13 That's what you said. What happens right up until that
14 point?

15 A. Josh was handcuffed, looking to his right.
16 And from what I can see, it looks like he says something,
17 and then the officer grabbed him and threw him to the
18 ground.

19 Q. So he turns his head?

20 A. Yes, head's turned.

21 Q. And you see his lips moving?

22 A. Yes.

23 Q. Because you said earlier that you couldn't
24 hear anything, right?

25 A. Correct.

1 Q. So you think he was saying something just by
2 the fact that his lips were moving?

3 A. Correct.

4 Q. Okay. And so the officer just immediately --
5 what does he do right after Josh turns his head and says
6 that?

7 A. He throws him to the ground.

8 Q. How does he do that?

9 A. Just grabs his arm and whips him down.

10 Q. Okay. So he grabs his arm. Do you recall
11 which arm he grabbed?

12 A. I believe it was his left arm.

13 Q. Okay. So his left arm. And he takes it and
14 just -- I want to know the sequence here. You say he
15 whips him around, what does that mean?

16 A. Well, he grabs him, and he throws him to the
17 ground.

18 Q. Okay. So, which side of the officer does he
19 move Josh -- Mr. Chatwin towards? Is the officer moving
20 Mr. Chatwin towards your house, or towards Mr. Chatwin's
21 house?

22 A. Counter-clockwise.

23 Q. Counter-clockwise. So towards Mr. Chatwin's
24 house?

25 A. Correct.

1 Q. And then where does Mr. Chatwin end out going
2 to the ground?

3 A. In the gutter.

4 Q. In the gutter of his driveway?

5 A. Correct.

6 Q. Okay. So, he makes like a 180, and ends out
7 behind where he was standing before?

8 A. Correct.

9 Q. Okay. Can you mark on this drawing that we
10 did, where he ends out on the ground, please?

11 A. Approximately.

12 Q. Okay. So you've marked kind of on the edge
13 of the street here right behind the truck?

14 A. Yeah. Yeah.

15 Q. Okay. So, you've moved it a little bit, so
16 that it's to the left of the truck. Okay. When you saw
17 Josh's lips moving, could you tell what he said?

18 A. No.

19 Q. Was he saying -- was it a long conversation,
20 a long statement that he made, or something short?

21 A. I don't know.

22 Q. Did you see his lips moving for a long period
23 of time?

24 A. No.

25 Q. So, it was a short statement you would say?

1 A. I would say.

2 Q. And the officer, when Josh turns his head and
3 starts saying whatever it is he said, what was the
4 officer doing, just standing there?

5 A. Behind him?

6 Q. Yes.

7 A. Yes.

8 Q. When you say he threw him to the ground, the
9 officer threw Mr. Chatwin to the ground, would you say
10 the officer literally picked him up and tossed him, or
11 Mr. Chatwin stumbled to the ground after he was turned?
12 I want to know what you mean by 'threw him to the
13 ground'?

14 A. Well, he's handcuffed, so he didn't, like,
15 pick him up and toss him. He grabs him, and he just
16 throws him down.

17 Q. He grabs his left arm, correct?

18 A. Correct.

19 Q. Turns him counter-clockwise, and pushes him
20 down?

21 A. No, he throws him down.

22 Q. So I don't understand what you mean by
23 'throws'?

24 A. Would it be easier if I showed you?

25 Q. Well, I know we have a video here, but we

1 also need to try to make a record. So if you can
2 describe it to me, that would be great.

3 A. He stands behind him, he grabs him by the
4 arm, and he throws him to the ground.

5 Q. So he did push him to the ground?

6 MS. MARCY: Objection, mischaracterizes the
7 testimony.

8 BY MS. GREGSON:

9 Q. You can answer the question.

10 A. Can you repeat it again?

11 Q. So he did push him to the ground?

12 A. What do you consider pushing?

13 Q. Did the officer use some sort of momentum or
14 force to push him to the ground?

15 A. Push or throw, is there a difference?

16 Q. Do you think there's a difference?

17 A. Yeah. If I push somebody or if I throw
18 somebody, that I think is a difference.

19 Q. Did you see Josh's feet leave the ground?

20 A. I don't remember.

21 Q. You don't remember?

22 A. No.

23 Q. Was Mr. Chatwin stumbling when the officer
24 moves him quickly?

25 A. I don't remember.

1 Q. How did Mr. Chatwin fall? Did he fall face
2 first? On his back? On his side?

3 A. On his head.

4 Q. On his head. So the first part of his body
5 to hit the ground was his head?

6 A. Pretty much.

7 Q. You didn't notice whether his knees hit or --
8 no? I need an audible response, sorry?

9 A. I wanted you to finish your question.

10 Q. Go ahead.

11 A. I'm trying to help her. I don't remember.

12 Q. Do you think -- strike that. Sorry. Where
13 was the female officer standing when Mr. Chatwin went to
14 the ground?

15 A. Between the two cars, between the officer's
16 car and where Josh was.

17 Q. Okay.

18 A. So right between the two.

19 Q. Okay. And the first officer that you said he
20 had gone and started getting things out of the truck,
21 where was he located when Josh went to the ground?

22 A. He was back in the car.

23 Q. So he had gone back to Josh -- Mr. Chatwin's
24 car, and was searching through it again?

25 A. Correct.

1 sobriety test.' Did I read that correctly?

2 A. Yes.

3 Q. 'They handcuffed the gentleman, and walked
4 him to the officer's truck. He was handcuffed facing the
5 car (truck), when the second officer on the scene grabbed
6 the boy by the handcuffs, whipped him around so hard that
7 when he hit the pavement, his head bounced up.' Did I
8 read that correctly?

9 A. Yes, you did.

10 Q. Okay. I want to stop there for just a
11 second. You say here that 'the officer grabbed the boy',
12 I assume 'the boy' is Mr. Chatwin?

13 A. Yes.

14 Q. It says that 'he grabbed Mr. Chatwin by the
15 handcuffs'?

16 A. Okay.

17 Q. You testified earlier that you said he
18 grabbed him by his left arm?

19 A. Okay.

20 Q. Which one is correct?

21 A. I'm gonna say whatever I wrote in this.

22 Q. Why?

23 A. Because we're talking five years ago.

24 Q. 'And he whipped him around so hard that when
25 he hit the pavement, his head bounced up.'

1 You don't say that he threw him to the ground here;
2 why not?

3 A. I guess that's not my terminology.

4 Q. But a day or two later when you wrote this
5 other statement -- let's look at this one now. You've
6 written kind of sideways in the margin here, 'the man
7 looked my way over his shoulder when he said something to
8 the office' -- officer I'm assuming -- 'right before the
9 cop threw him to the ground.'

10 A. So when I wrote the first one, when you see
11 something like that, it gets your adrenaline going. It's
12 amazing that -- you're just like 'oh my God'. So,
13 whatever I wrote on this one, my adrenaline is rushing.
14 When I sat down and I calmed down and I'm trying to write
15 it out specifically, perhaps that's when I wrote 'threw
16 him' instead of 'whipped him', it's just my terminology.
17 It means the same thing to me.

18 Q. Okay. And so here in the second statement --
19 let's keep looking at that now. This is where you
20 mention that you saw Mr. Chatwin turn and say something
21 to the officer. You didn't mention that in the first
22 statement, correct?

23 A. No, because this was just a brief -- a
24 quickly written -- like I said, it's just been quickly
25 written, so I could give it to the officer before I left.

1 the side of his face about his emotions at the time?

2 A. No.

3 Q. All right. In your testimony during the
4 preliminary hearing, you were asked some questions about
5 whether you saw Mr. Chatwin doing certain things when he
6 was facing the truck. And you testified that you were
7 absolutely positive, and you guaranteed that Mr. Chatwin
8 did not undo the gun clip on the officer's belt. Do you
9 recall that testimony?

10 A. Absolutely.

11 Q. That's quite a statement to say that you
12 guarantee it. Did you know that Mr. Chatwin testified
13 yesterday?

14 A. I heard.

15 Q. Did you know that he testified that he was
16 getting upset with the officers when he was being
17 arrested?

18 MS. MARCY: Objection, mischaracterizes the
19 testimony.

20 MS. GREGSON: Did you know that he testified that
21 he may have been getting a little aggressive with the
22 officers?

23 MS. MARCY: Objection, mischaracterizes the
24 testimony.

25 THE WITNESS: I don't know what he testified to

1 yesterday.

2 MS. GREGSON: Do you think it's possible that while
3 you were watching Mr. Chatwin's face while he was
4 talking, you say you saw him talking, that he could have
5 been doing something with his hands that you didn't
6 notice?

7 A. No.

8 Q. Not possible?

9 A. Not possible.

10 Q. Still think that you can just absolutely
11 guarantee?

12 A. Absolutely.

13 Q. You said the same thing about whether Josh
14 tried to head butt the officer.

15 A. That did not happen.

16 Q. How do you know?

17 A. Excuse me? How do I know?

18 Q. How are you absolutely positive that it --

19 A. Because I was standing there watching.

20 Q. You said you saw him turn his head, correct?

21 A. Correct.

22 Q. So, was he leaning back when he turned his
23 head?

24 A. No, he was leaning forward on the truck.

25 Q. Did his head move backwards when he turned

1 it?

2 A. No, it just turned.

3 Q. So still absolutely positive, there is no
4 possibility his head might have moved backwards?

5 A. None whatsoever.

6 Q. All right. Do you recall earlier I was
7 asking you about the field sobriety test?

8 A. Yes.

9 Q. And you testified that Mr. Chatwin -- I'm
10 paraphrasing, because I don't recall exactly what your
11 words were -- but that he was having a hard time doing
12 the field sobriety test?

13 A. Yes.

14 Q. That he was having a hard time with his
15 balance?

16 A. Yes.

17 Q. No possibility whatsoever that he could have
18 lost his balance when the officer was moving him, and
19 fallen?

20 A. When he was moving him?

21 Q. When the officer moved him around, like you
22 said he did, he grabbed his handcuffs or his arm or that
23 area, right?

24 A. To throw him to the ground?

25 Q. No possibility that he could have lost his

1 balance and fallen? Are you absolutely positive,
2 guarantee that?

3 A. I never said that.

4 Q. You said he threw him to the ground?

5 A. Yes.

6 Q. So --

7 A. I never said he didn't lose his balance.
8 We're talking about when he was facing the truck. When
9 he's facing the truck, and you asked me if he tried to
10 undo the officer's holster, absolutely not. If you're
11 asking me if he jerked back, absolutely not. When he
12 grabbed him by the arm and threw him to the ground, a
13 person goes flying.

14 Q. So I'm asking you, are you absolutely certain
15 that if the officer just grabbed his arm and moved him
16 quickly, Mr. Chatwin couldn't have lost his balance and
17 just fallen down?

18 A. No.

19 Q. No, you're not absolutely certain? I'm
20 sorry?

21 A. No, he didn't fall down, he was thrown down.

22 Q. So you're positive about that, too?

23 A. That he was thrown down?

24 Q. Yes.

25 A. I'm positive he was thrown down, I saw the

1 officer throw him to the ground.

2 Q. All right. I'm -- let's take one more quick
3 break, I'm getting to the end here.

4 (Whereupon a recess was taken.)

5 BY MS. GREGSON:

6 Q. Okay. So Ms. Torrence, I just have a few
7 more things I want to talk to you about.

8 A. Okay.

9 Q. You mentioned earlier you've lived in
10 California and Arizona and then Utah, I believe; is that
11 correct?

12 A. Correct, correct.

13 Q. Okay. In the various places that you've
14 lived, have you had any interaction with police officers?

15 A. No.

16 Q. Never?

17 A. I don't think so.

18 Q. Never called the police for help when you
19 were living in California?

20 A. Not that I remember.

21 Q. Did you ever have any interaction with police
22 in Phoenix?

23 A. No.

24 Q. So what about in Utah, you said you've been
25 living in Draper the whole time you've lived here,

1 and you could see the purple, it was very scary.

2 Q. When did you have, during that time period --
3 and let's go back for a minute. From the time that Mr.
4 Chatwin was thrown to the ground, and the time you left
5 the window that you were looking through, could you
6 estimate about how long that was?

7 A. No.

8 Q. Okay. Would it be less than ten minutes?

9 A. Sure, yes.

10 Q. Less than five?

11 A. Yes.

12 Q. All right. More than two?

13 A. We were getting kind of -- I'm -- you know, I
14 mean, when your adrenaline's pumping, it could have been
15 15 seconds. It wasn't -- I just saw it and you're like,
16 'oh, my God, oh my God', what do you do? You know it's
17 like, you want to help them, no that's not a good idea.
18 And I'm a fast thinker, so it could have been five
19 seconds and I went out the garage door to cross to
20 Heidi's. I couldn't tell you exactly the time frame, but
21 it was -- it was a short amount of time.

22 Q. Did you see -- did you see, when you said
23 they -- but you were there long enough to see them kneel
24 down and one of them pat the shoulder?

25 A. Yes.

1 Q. Did you see them --

2 A. He tapped him a couple of times.

3 Q. Did you see either of the officers, or any of
4 the officers do anything else?

5 A. No.

6 Q. Anything as far as, as a lay person, you
7 would recognize as being checking on him?

8 A. No. Not that I recall.

9 Q. Any aid to him?

10 A. No, because at that point we went over -- I
11 went over and got Heidi, then we went to the next door
12 neighbor's to the left of Heidi's house, and got the
13 phone number. When we came back out, Josh was now
14 propped up. And I think there was -- it was like a red
15 fire engine, a red truck. I don't recall what kind of
16 car it was, and you could see the blood coming out of his
17 ear.

18 Q. When you say 'propped up', propped up against
19 what?

20 A. The tire of the truck.

21 Q. Of what vehicle?

22 A. I don't remember exactly. I want to say it
23 would be the medic, the paramedic truck, or whatever that
24 truck was that was there. Like, whatever that truck was.
25 It wasn't like -- I don't think it was a police